



# 'No more stories for you, my children!'

**New legislation could put Gcina Mhlophe and Credo Mutwa out of business, writes Nothando Migogo Hlatswayo**

## **AS A PERSON LIVING IN MODERN-DAY SOUTH AFRICA, DO THE NAMES GOROGO, MARIMBA OR MALANDELA RING A BELL?**

Do you know the story of creation as told by your forefathers? The story of Ninavanhu-Ma?

You may have had a family member well-versed in the traditional tales that were passed down from generation to generation, and eventually to you. It is more likely, however, that you vaguely remember snippets of these stories (if at all) from your childhood and that retelling any one of these stories with clarity is, at best, a tricky undertaking.

If you are anything like me, I fear, your children are in trouble.

I could probably give you a satisfactory account of Shakespeare's main works, but do not ask me questions about how pre-colonial African peoples interacted. Don't expect me to know about the stories,

poetry and myths.

I'm talking about the stories, fact and fiction, that form the fabric that binds traditions and rituals together; the tales that were told to children around the fire. It is these tales and legends that have fallen by the wayside as we go about our busy daily lives.

There are, fortunately, a few writers who have written down these fables. In South Africa, the names Gcina Mhlophe and Credo Vusamazulu Mutwa come to mind.

Credo Mutwa's 'Indaba My Children' and Mhlophe's 'Stories of Africa', amongst others, seek to document Africa's richest but most crippled cultural pillar: its oral tradition. African stories are so rich in idiom and poetry that translating them intact is almost impossible. At the same time, the chance these stories have of surviving in oral form becomes slimmer with every generation.

If these stories are to survive, they must be written down. It is therefore surprising

that our own government is intent on passing legislation that, despite its purported intent, has the effect of putting the likes of Mutwa and Mhlophe out of business.

The new Intellectual Property Laws Amendment Bill, which the Department of Trade and Industry aims to introduce to Parliament in 2010, claims that one of its objectives is to empower communities to commercialise their indigenous knowledge, referred to as traditional works. This is both a welcome and exciting prospect.

Strangely enough, however, this Bill will have the effect of making it illegal for Mutwa, Mhlophe or any of their colleagues to share traditional stories in published books without facing reams of red tape. Firstly, the author would now need to secure the permission of the indigenous community that claims ownership of that story. Further, the copyright in the published edition of the story will no longer belong to the author, but to a government trust fund.

So let us say an author decides to write a book telling a traditional Zulu children's tale. Which Zulu community is entitled to lay claim to the story? The entire KwaZulu-Natal region? How about the Zulu people in the Eastern Cape?

The simple answer is: no one knows because the Bill does not say how one identifies an indigenous community. Worse still, it doesn't even provide a way of proving that a community's claim is, in fact, genuine.

So, even though the desired result would be that the author pays a royalty to the government trust fund which will, it is envisaged, apply the royalty for the benefit of the community, the inconsistencies in the Bill make it virtually impossible to achieve this. The mere fact that the Bill fails to define an indigenous community makes its desired effect unattainable.

In future, those authors who have undertaken the noble task of writing down and sharing with us these invaluable stories will be penalised for their efforts and eventually discouraged from publishing similar books in the future. This will further widen the gap between us and our history and, ultimately, leave us all the poorer. Can we afford to let this Bill be passed into law? For our children and their children's sake, I say no.

To continue the conversation on the IP Bill refer to [www.samro.org.za](http://www.samro.org.za) or join us on our facebook page.